Canadian Human Rights Tribunal

2009–10 Estimates

Part III — Report on Plans and Priorities

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Minister of Justice and Attorney General of Canada

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Chairperson's Message

The Government of Canada has set a goal to make Canada a diverse society that promotes linguistic duality and social inclusion. This is a tall order, achieved neither by magisterial edict nor by wishful thinking. The existence of federal and provincial human rights acts, commissions and tribunals, however, demonstrates our nation's commitment to this lofty agenda.

As the custodian of a vital piece of Canada's human rights protection machinery, the Canadian Human Rights Tribunal helps to define equality and normalize diversity. Through its written decisions of the past three decades it has helped diversify the federally regulated workplace and informed the jurisprudence that affects Canadian society generally in such areas as pay equity, discrimination and harassment on the basis of sex or sexual orientation, and the duty to accommodate persons with disabilities. Although the Tribunal does not *promote* human rights (that is the job of the Canadian Human Rights Commission), it does advance the aims of the *Canadian Human Rights Act* by providing a forum where human rights complaints can be scrutinized and resolved and by making the hard judgment calls that transport the Act from the statute books to the streets. The Tribunal will continue to focus on this objective over the coming years.

J. Grant Sinclair

Section 1 Departmental Overview

1.1 Raison d'être and Responsibilities

Raison d'être

The Canadian Human Rights Tribunal is a quasi-judicial body that hears complaints of discrimination referred by the Canadian Human Rights Commission and determines whether the activities complained of violate the *Canadian Human Rights Act* (CHRA). The purpose of the CHRA is to protect individuals from discrimination and to promote equal opportunity. The Tribunal also decides cases brought under the *Employment Equity Act* and, pursuant to section 11 of the CHRA, determines allegations of wage disparity between men and women doing work of equal value in the same establishment.

Roles and Responsibilities

In hearing complaints under the *Canadian Human Rights Act* (CHRA) and the *Employment Equity Act* (EEA), the Canadian Human Rights Tribunal considers matters concerning employment or the provision of goods, services, facilities or accommodation. The CHRA makes it an offence for anyone to discriminate against any individual or group on 11 grounds:

- race;
- national or ethnic origin;
- colour;
- religion;
- age;
- sex (includes pay equity, pregnancy, childbirth and harassment, although harassment can apply to all grounds);
- marital status;
- family status;
- sexual orientation;
- disability (can be mental/physical and includes disfigurement and past, existing or perceived alcohol or drug dependence); or
- conviction for which a pardon has been granted.

The Tribunal's jurisdiction covers matters that come within the legislative authority of the Parliament of Canada, including those concerning federal government departments and agencies, as well as banks, airlines and other federally regulated employers and providers of goods, services, facilities and accommodation. The Tribunal holds public hearings to inquire into complaints of discrimination. Based on evidence and the law (often conflicting and complex), it determines whether discrimination has occurred. If it has, the Tribunal determines the appropriate remedy to compensate the victim of the discriminatory practice, as well as policy adjustments necessary to prevent future discrimination.

The majority of discriminatory acts that the Tribunal adjudicates are not malicious. Many conflicts arise from long-standing practices, legitimate concerns by employers, or conflicting interpretations of statutes and precedents. The role of the Tribunal is to discern the positions of the parties and establish fair and appropriate "rules" to resolve the dispute.

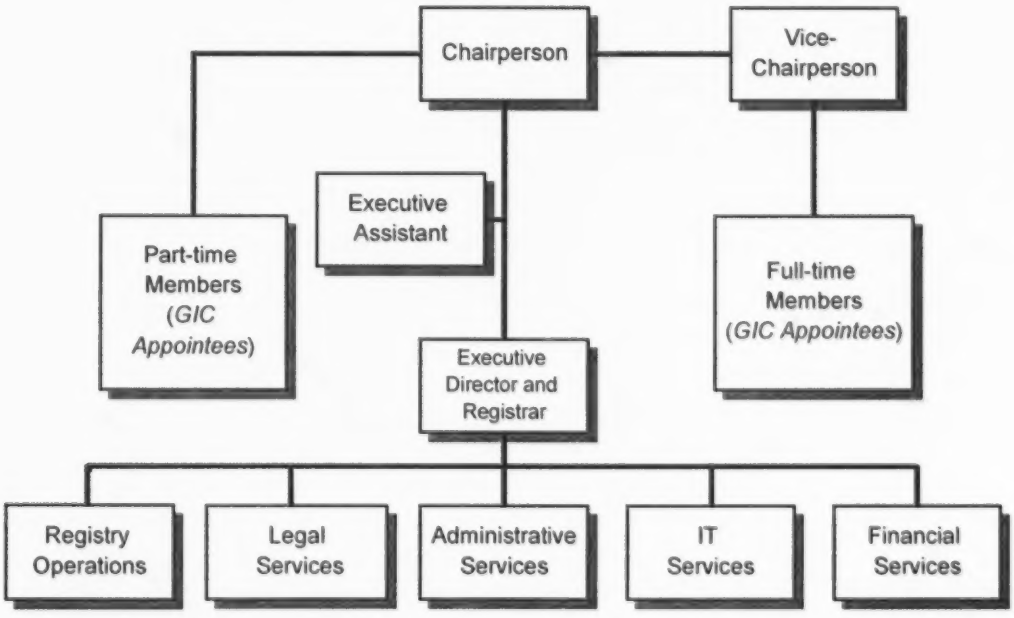
The Tribunal may inquire only into complaints under the CHRA that are referred to it by the Canadian Human Rights Commission, usually after a full investigation by the Commission. The Commission resolves most cases without the Tribunal's intervention. Cases referred to the Tribunal generally involve complicated legal issues, new human rights issues, unexplored areas of discrimination or multi-faceted evidentiary complaints that must be heard under oath, especially in cases with conflicting evidence that involve issues of credibility.

The Tribunal is not an advocate for the CHRA; that is the role of the Commission. The Tribunal has a statutory mandate to apply the Act based solely on the evidence presented and on current case law. If there is no evidence to support an allegation, then the Tribunal must dismiss the complaint.

Organizational Structure

The Canadian Human Rights Tribunal is a small, permanent organization comprising a full-time Chairperson and Vice-Chairperson, and up to 13 full- or part-time members (see chart). Under the statute, both the Chairperson and the Vice-Chairperson must have been members of the bar for more than 10 years.

Tribunal Organization Chart



Members

To be eligible for appointment by the Governor in Council, all members of the Tribunal are required to have expertise in, and sensitivity to, human rights issues. In addition, members attend meetings for training and briefing sessions on such topics as decision-writing techniques, evidence and procedure, and in-depth analysis of human rights issues. Throughout their three- or five-year terms, Tribunal members are given opportunities for professional development.

Registry Operations

Administrative responsibility for the Tribunal rests with the Registry. It plans and arranges hearings, acts as liaison between the parties and Tribunal members, and provides administrative support. The Registry is also accountable for the operating resources allocated to the Tribunal by Parliament.

Legal, Administrative, Information Technology and Financial Services

Tribunal and Registry operations are supported by Legal Services, Administrative Services, Information Technology Services and Financial Services.

Legal Services provides the Tribunal with legal information, advice and representation.

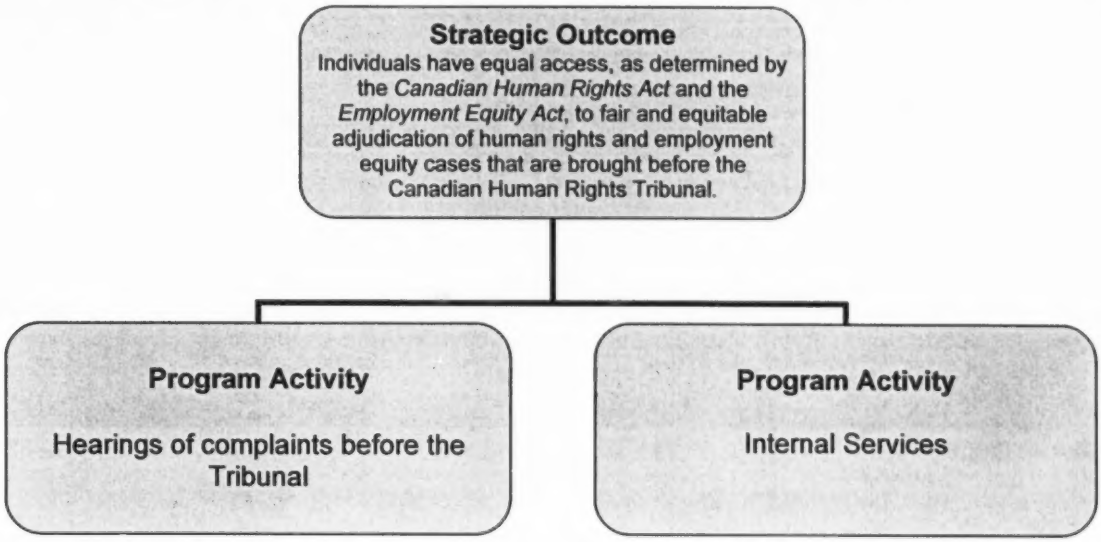
Administrative Services provides support to the Tribunal in facilities management, communications, materiel management, procurement of goods and services, information management, security, reception and courier services. It also assists the Registrar's Office in the development and implementation of government-wide initiatives, such as workforce representation, capacity-building, linguistic rights, stewardship and accountability.

The main priority of Information Technology Services is to ensure that the Tribunal has the technology required to perform efficiently and effectively. The section advises Registry staff and members on the use of corporate systems and technology available internally and externally, and offers training. The section is also responsible for ensuring system compliance with government-wide technology policies and for ensuring system integrity, security and continuity.

Financial Services provides the Tribunal with accounting services, financial information and advice.

Human resources services are contracted out to Public Works and Government Services Canada.

1.2 Strategic Outcome and Program Activity Architecture


Strategic Outcome
Individuals have equal access, as determined by the *Canadian Human Rights Act* and the *Employment Equity Act*, to fair and equitable adjudication of human rights and employment equity cases that are brought before the Canadian Human Rights Tribunal.
Program Activity
Hearings of complaints before the Tribunal
Program Activity
Internal Services

1.3 Planning Summary

Financial Resources ($ millions)

2009–10	2010–11	2011–12
4.4	4.4	4.4

Human Resources (Full-time Equivalents—FTEs)

2009–10	2010–11	2011–12
26	26	26

Summary Table ($ millions)

Strategic Outcome: Individuals have equal access, as determined by the *Canadian Human Rights Act* and the *Employment Equity Act*, to fair and equitable adjudication of human rights and employment equity cases that are brought before the Canadian Human Rights Tribunal.					
Performance Indicators Tribunal decisions/rulings		**Targets** Rendering decisions within four months of the close of the hearing, in 80% of cases			
Program Activity[1]	**Forecast Spending 2008–09**	**Planned Spending**			**Alignment to Government of Canada Outcomes**
		2009–10	**2010–11**	**2011–12**	
Hearings of complaints before the Tribunal	2.7	2.5	2.5	2.5	Social Affairs Creating a diverse society that promotes linguistic duality and social inclusion.
Internal Services	1.9	1.9	1.9	1.9	
Total Planned Spending	4.6	4.4	4.4	4.4	

Contribution of Priorities to Strategic Outcome

The Tribunal's priorities are largely dictated by its **single strategic outcome**. It will therefore continue to do what it does well: provide individuals equal access to fair and equitable adjudication of human rights and employment equity cases. Tribunal members will provide well-reasoned decisions and, where appropriate, order suitable remedies for those who have suffered discrimination. The Tribunal's decisions will also provide guidance and direction to employers and service providers on the development of policies and practices that are consistent with respect to human rights. In addition to its usual business of conducting hearings, the Tribunal plans to pursue the priorities summarized in the table below.

The priorities that were identified in the Tribunal's *2008–09 Report on Plans and Priorities* have been determined to be more appropriately defined as initiatives for achieving priorities and have been moved to section 2 of this report.

1 For program activity descriptions, please access the Main Estimates online at www.tbs-sct.gc.ca/est-pre/estimE.asp.

Operational Priorities	Type	Links to the Single Strategic Outcome and to Program Activity	Description
Continuous program improvement	Ongoing	PA: Hearings of complaints before the Tribunal	The Tribunal will continue to strive for increased inquiry process efficiencies to ensure complaint inquiries are conducted in an expeditious manner, as required by the *Canadian Human Rights Act*.
Managerial Priorities	**Type**	**Links to the Single Strategic Outcome and to Program Activity**	**Description**
Improved corporate management	Ongoing	PA: Hearings of complaints before the Tribunal PA: Internal Services	The Tribunal will continue to research, develop and implement corporate and administrative efficiencies that will best support and enable an efficient and expeditious complaint inquiry process.

1.4 Risk Analysis

The Tribunal's main risk is the increased pressure on its resources from a generally increased and unpredictable workload, as well as the need to meet the obligations of government-wide horizontal initiatives.

From 1996 to 2002, the Canadian Human Rights Commission referred to the Tribunal an average of 44 human rights complaints each year. The Tribunal saw a dramatic rise in the number of new complaint cases, to 130 in 2003, with a further increase to 139 in 2004. The number of new cases dropped to 99 in 2005, to 70 in 2006 and then rose to 82 in 2007. The volume of referrals in 2008 is expected to rise again to 100 complaint files. This heavy workload, which is well above pre-2003 levels, is expected to continue into 2009 and 2010 and will continue to challenge the Tribunal's resources.

Micro-agencies, such as the Tribunal, typically struggle with the additional resource demands posed by resource-intensive, yet necessary, horizontal government initiatives. The Tribunal is continuing work on several, such as strengthening its accountability framework and its information management capacity, planning for internal audit and evaluation policy implementation, and developing measures to enhance human resources management in the context of public service renewal.

Despite its very limited resources, the Tribunal plans to meet these daunting challenges over the next three fiscal years using a combination of operational and corporate strategies. Two 2005 initiatives address the risks from its workload challenges: a case management system for closely monitoring the pre-hearing phase of inquiries and the automated case management system, the Tribunal Toolkit. To ensure the continuity of the expertise needed for addressing the workload risk, the Tribunal is also planning to establish measures to enhance human resources retention, knowledge transfer and succession planning.

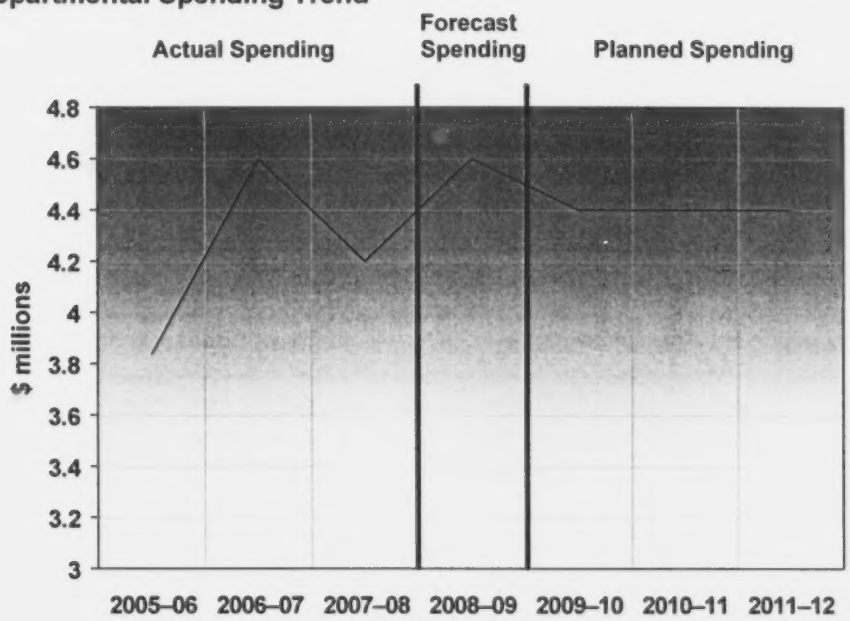
For achieving broader government-wide outcomes, the Tribunal will continue to actively seek opportunities both from new technologies and interdepartmental partnerships, sharing and collaboration. The Tribunal believes this approach will mitigate the pressure caused by horizontal initiatives while ensuring the Tribunal continues to be well positioned to carry out its mandate.

1.5 Expenditure Profile

Funding

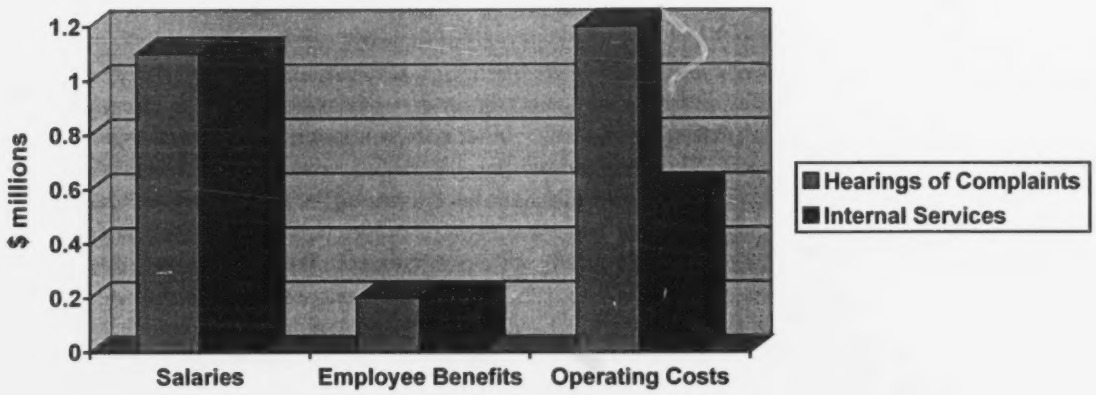
The Tribunal is funded by annual appropriations from Parliament through a program expenditures vote for hearings and administrative operating expenditures. Main reference levels are not usually sufficient to cover costs for cases requiring inordinately long hearings, such as cases to determine allegations of wage disparity between men and women doing work of equal value in the same establishment (i.e., pay equity cases); Treasury Board submissions are prepared as required to obtain additional funding for these cases.

Departmental Spending Trend



Spending trends have remained relatively constant over time. Amounts shown in this report do not include services provided without charge by other government departments and agencies of approximately $1.2 million per year for accommodation provided by Public Works and Government Services Canada and for government payments to employee insurance plans. The increase in actual spending from 2005–06 to 2006–07 resulted from salary expenses in relation to retirement and parental benefits and from increased operating costs because of an increase in the number of hearing days held. At the time this document was prepared, it was forecast that the annual appropriation amount for 2008–09 would be spent. The majority of expenses are for employee salaries and benefits, conducting hearings, and maintaining the internal services that provide the infrastructure that supports the Tribunal's single program.

Program Activity 2009–10 Planned Spending



Voted and Statutory Items ($ millions)

Vote # or Statutory Item (S)	Truncated Vote or Statutory Wording	2008–09 Main Estimates	2009–10 Main Estimates
15	Program expenditures	4.0	4.0
(S)	Contributions to employee benefit plans	0.4	0.4
	Total Tribunal	4.4	4.4

Section 2 Analysis of Program Activities by Strategic Outcome

2.1 Strategic Outcome

Individuals have equal access, as determined by the *Canadian Human Rights Act* and the *Employment Equity Act*, to fair and equitable adjudication of human rights and employment equity cases that are brought before the Canadian Human Rights Tribunal.

The Tribunal achieves its strategic outcome and results for Canadians through its main program activity, Hearings of Complaints before the Tribunal, together with its Internal Services program activity.

2.1.1 Program Activity: Hearings of Complaints before the Tribunal

Human Resources (FTEs) and Planned Spending ($ millions)					
2009–10		2010–11		2011–12	
FTEs	Planned Spending	FTEs	Planned Spending	FTEs	Planned Spending
13	2.5	13	2.5	13	2.5

Program Activity Expected Result	Performance Indicators	Targets
Clear and fair interpretation of the *Canadian Human Rights Act* and the *Employment Equity Act*, access to an adjudication process that is efficient, equitable and fair to all who appear before the Tribunal, and meaningful legal precedents for use of employers, service providers and Canadians.	• Timeliness of initiating inquiry process • Number of judicial reviews (overturned vs. upheld) • Percentage of cases commenced within time lines • Percentage of cases completed within time lines	• Initiate inquiry within 10 days of referral, in 90% of cases • Majority of decisions upheld or not judicially challenged • Commencing hearings within 6 months of receiving a complaint/referral, in 70% of cases • Concluding inquiries within 12 months of referral, in 70% of cases

Program Activity Summary

This program activity inquires into complaints of discrimination to decide, following a hearing before Tribunal members, if particular practices have contravened the *Canadian Human Rights Act.* Tribunal members also conduct hearings into applications from the Canadian Human Rights Commission and requests from employers to adjudicate on decisions and directions given by the Commission under the *Employment Equity Act.*

Planning Highlights

To achieve the expected result, the Tribunal plans to undertake the following activity:

Continuous program improvement

Planned activity	Result and time line
Monitor the Tribunal's case management initiative for effectiveness and efficiency.	Measures that appropriately assess the timeliness, effectiveness and efficiency of the Tribunal's inquiry process are confirmed or re-established, by March 2010.

Human rights complaints raise very serious issues that affect Canadian society directly and have the potential for affecting the very livelihood and key business operations of those who come before the Tribunal. The Tribunal therefore strives to commence hearings of complaints within 6 months of referral by the Commission, and strives also to conclude inquiries within a 12-month time frame. However, many of the human rights cases before the Tribunal raise factual and/or legal issues of such complexity and importance that a rush to hearing is neither feasible nor desirable. Complaints sometimes also arise in settings, such as remote northern communities, that pose logistical difficulties or for whom the pressures of an expedited adjudication process pose a particular challenge. Although hearings are now unfolding more efficiently since the 2005 introduction of case management, the Tribunal nevertheless recognizes that parties sometimes need more time and the additional intervention of a Tribunal member to get to hearing.

The Tribunal will continue to monitor case management procedures to maximize the effectiveness and efficiency of that process. It will also introduce added flexibility into the process to help parties resolve the complaint or get to hearing within the earliest possible time frame, for example, to allow for earlier intervention by a Tribunal member in cases where it is evident that the parties could benefit from mediation. It will also investigate making greater use of tools, such as Tribunal Practice Notes, which help the parties better understand the inquiry process and be better positioned to meet their disclosure and other pre-hearing obligations, and the feasibility of posting them on the Tribunal's website.

Benefits for Canadians

As the custodian of a vital piece of Canada's human rights protection machinery, the Tribunal benefits Canadians by increasing the thread count in the fabric of Canadian society. In providing a forum where human rights complaints can be scrutinized and resolved and by articulating findings and observations on important issues of discrimination in the form of formal decisions,

the Tribunal gives effect to the principles enshrined in federal human rights legislation. The result of the Tribunal's program is that complainants can air their grievances and achieve closure in a respectful, impartial forum. In the longer term, Tribunal decisions create meaningful legal precedents for use by employers, service providers and Canadians.

Although the Tribunal (including its predecessors) has been part of the human rights landscape in Canada for decades, Tribunal decisions have not always enjoyed the authority they do today. Until recently, allegations of institutional bias and lack of independence undermined the effectiveness of Canada's human rights enforcement machinery, and requests for judicial reviews of Tribunal decisions and rulings were commonplace. For example, all eight of the Tribunal's written decisions issued in 1998 were challenged. Statutory changes in 1998 raised the stature and perceived independence of the Tribunal, resulting in fewer challenges to Tribunal decisions and greater approbation by the Federal Court when Tribunal decisions are appealed.

Ultimately, this acceptance benefits both complainants and respondents, since Tribunal decisions are increasingly perceived as definitive and the parties can get on with their lives. Written decisions become part of the public record. As well as specifying whether a respondent's actions have run afoul of the Act, Tribunal decisions provide guidance, where appropriate, on how to bring policies and practices into line with the legislation to prevent discrimination in future. Such explanations benefit not only the parties involved, but also all employers and service providers and their employees and clients. It is therefore an expected (and sought after) result of Tribunal decisions that they will be accepted by the parties involved and, if judicially challenged, upheld by the reviewing court. Such acceptance benefits all of society since it expedites justice and reduces the cost of protracted appeals.

2.1.2 Program Activity: Internal Services

Financial Resources ($ millions)		
2009–10	2010–11	2011–12
1.9	1.9	1.9

Human Resources (FTEs)		
2009–10	2010–11	2011–12
13	13	13

Program Activity Summary and Planning Highlights

Internal Services are groups of related activities and resources that support the needs of programs and other corporate obligations of an organization. These groups are: Acquisition Services; Communications Services; Financial Management Services; Human Resources Management Services; Information Technology Services; Legal Services; Management and Oversight Services; Materiel Services; Real Property Services; and Travel and Other Administrative Services. Internal Services include only those activities and resources that apply across an organization and not those provided specifically to a program.

The Tribunal will continue to research, develop and implement corporate and administrative efficiencies that will best support and enable an efficient and expeditious complaint inquiry process. The Tribunal has a sound results-oriented framework based on its Management Accountability Framework (MAF) that takes into account the best interests of the agency, members, employees and Canadians. The planning highlights focus on an integrated management approach that covers areas ranging from human resources, risk management, performance measurement, modern technology and comptrollership.

To contribute to efforts for a 'green', energy-conscious government and to reduce the effect of Tribunal activities on the environment, the Tribunal will also investigate and implement new technologies wherever possible for improving management practices and reducing waste.

To achieve the managerial priority of improved corporate management, the Tribunal plans to undertake the following activities:

Strengthen the Tribunal's human resources management capacity

Planned activity	Result and time line
Review the Tribunal's management policies and practices for their continued adequacy in supporting the Tribunal's mandate and the government's public service renewal initiative.	The Tribunal's human resources management policies and practices are integrated with the Tribunal's business planning and fully aligned with the government's public service renewal initiative, by March 2010.

The Tribunal is a micro-agency (26 FTEs). Although somewhat less challenged by the broader and more complex human resource management issues that larger government organizations typically face, it nevertheless recognizes the need to continually strengthen its strategic human resources capacity to ensure that it remains relevant, accountable, results-focused, effective and competitive within the context of a respected, professional and forward-looking public service.

The Tribunal has remained closely in step with the government's human resources management modernization initiative. It has a functioning labour-management consultation committee and an informal conflict management consultation system. The required staffing policies under the *Public Service Modernization Act* and the *Public Service Employment Act* are in place and an Integrated Business Human Resources Plan has been approved and implemented.

The Tribunal will address the challenges identified by the Clerk of the Privy Council in his *Fifteenth Annual Report to the Prime Minister on the Public Service of Canada*. A learning framework is near completion and, over the next two fiscal years, a Tribunal-specific values and ethics statement will be developed to reinforce the principles supporting the Tribunal's mandate and its human resources management practices. The Tribunal will also review its human resources policy suite to ensure it is up to date and will continue to engage employees during the human resources planning process to ensure optimum relevance, efficiency and effectiveness.

The Tribunal holds no illusions as to its limited micro-agency capacity for helping to shape the broader federal public service. It will nevertheless continue to seek out every opportunity to work with and contribute to other government departments and agencies, especially those of like size and mandate, to assist in meeting the government-wide challenge for public service renewal.

Integrate the Tribunal's technology management practices and policies

Planned activity	Result and time line
Enhance the Tribunal's information management capacity by developing a strategy for fully integrating the Tribunal's technology management products, practices and policies.	The Tribunal has in place a strategy for the integration of its information and data reporting capacity, by March 2010.

The Tribunal recognizes that managing information is a crucial element of all federal government activities and an important part of the Tribunal's responsibilities. The government's Framework for the Management of Information (FMI) provides strategic direction and practical guidance. It describes why and how to integrate the management of information with a wide range of Government of Canada activities to improve business delivery, legal and policy compliance, citizen access, and accountability. The Tribunal has strengthened its FMI compliance by implementing the government's Records, Documents and Information Management System (RDIMS) for management of its corporate records. RDIMS also offers records imaging, full-text indexing search and retrieval, workflow management, on-line document viewing, and reporting capabilities.

For managing its operational case files, the Tribunal uses an automated system called the Tribunal Toolkit. A digital voice recording system replaces paper transcripts and more costly stenographic services for hearings. The Tribunal's decision distribution system for clients is also automated. It has introduced enhancements to other communication technology tools, such as its website and intranet.

An important step in attaining the Tribunal's certification under the government's Management of Information Technology Security Standard is the implementation of its Information Management Security Policy and a Business Continuity Plan.

In 2009–10, the Tribunal will respond to a 2008-09 internal audit of the Tribunal's information technology security. As a logical next step in advancing its suite of technology tools, the Tribunal will undertake a full review of its current technologies. From this review, it will develop a strategy for integrating technology management products, practices and policies. To ensure the technology suite performs to the highest possible standards, and to realize every possible advantage from available technology advancements, the Tribunal will continue to search out sharing opportunities and interact closely with government policy centres and other government departments and agencies. These efforts will enhance the Tribunal's capacity for conducting inquiries with optimal efficiency and, ultimately, for the delivery of best possible results for Canadians.

Section 3 Supplementary Information

3.1 List of Supplementary Information Tables

The following tables are available on the Treasury Board Secretariat's website at: tbs-sct.gc.ca/rpp/2009-2010/index-eng.asp.

Table 3.1: Internal Audits
Table 3.2: Evaluations

3.2 Other Items of Interest

Contacts for Further Information and Website

Executive Director and Registrar
Canadian Human Rights Tribunal
160 Elgin Street
11th Floor
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K1A 1J4

Tel: 613-995-1707
Fax: 613-995-3484

E-mail: registrar@chrt-tcdp.gc.ca

Website: www.chrt-tcdp.gc.ca

Legislation and Associated Regulations Administered

The Minister of Justice is responsible to Parliament for the *Canadian Human Rights Act* (R.S. 1985, c. H-6, as amended).
laws.justice.gc.ca/en/h-6/index.html

The Minister of Labour is responsible to Parliament for the *Employment Equity Act* (S.C. 1995, c. 44, as amended).
laws.justice.gc.ca/en/E-5.401/index.html

Statutory Annual Reports and Other Tribunal Reports

The following documents can be found on the Tribunal's website:

Action Plan for Modern Comptrollership (November 26, 2002)	www.chrt-tcdp.gc.ca/about/download/Final%20Action%20Plan-e.htm
Annual Reports	www.chrt-tcdp.gc.ca/about/annual_e.asp
Modern Comptrollership Capacity Assessment Final Report (June 2002)	www.chrt-tcdp.gc.ca/pdf/capacityassessment-e.pdf
Performance Reports	www.chrt-tcdp.gc.ca/about/performance_e.asp
Reports on Plans and Priorities	www.chrt-tcdp.gc.ca/about/plan_e.asp
Tribunal Rules and Procedures	www.chrt-tcdp.gc.ca/about/tribunalrules_e.asp